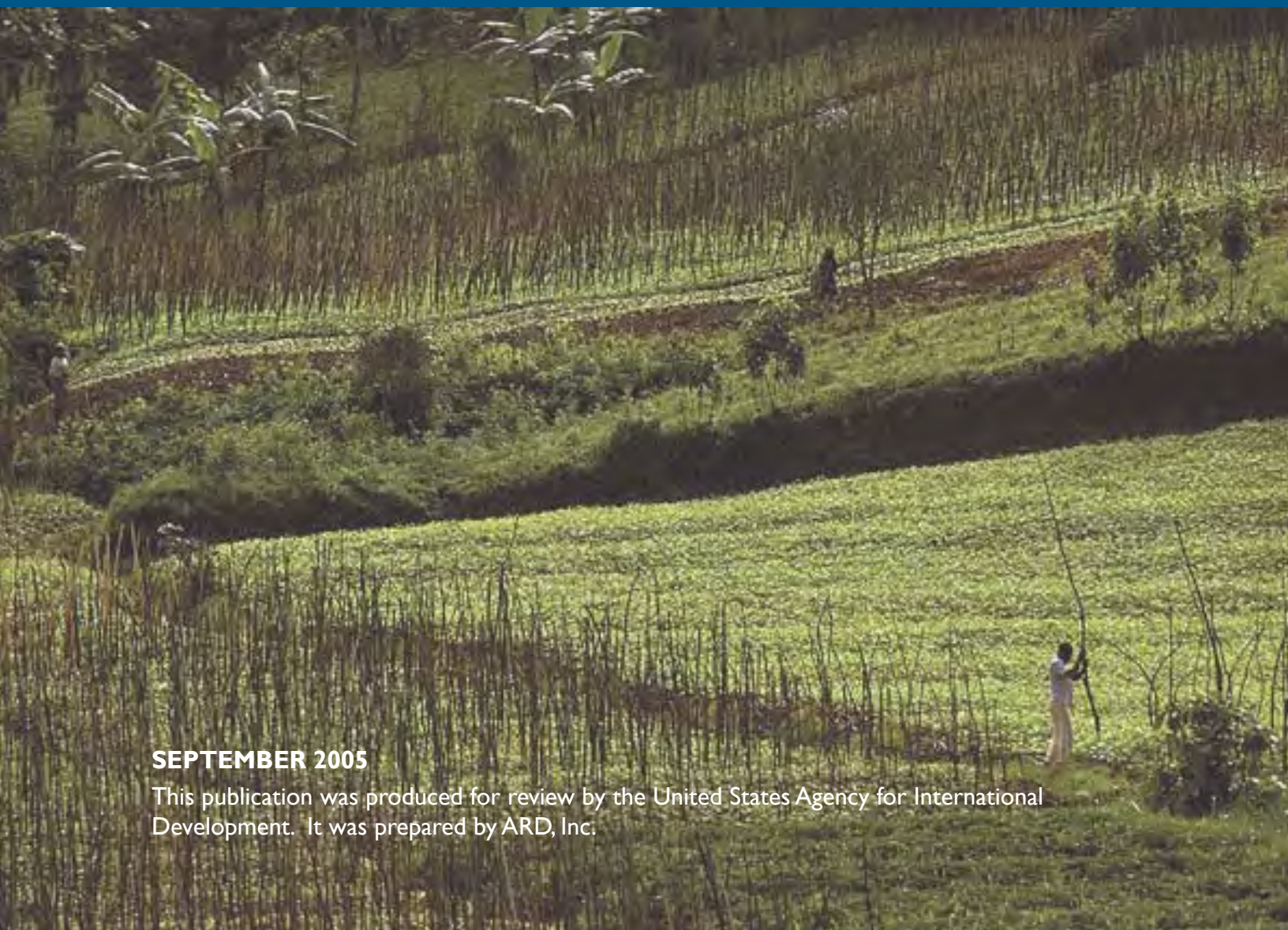




USAID
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Rwanda: Assistance with Land Law and Implementing Laws and Regulations



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Task Order: Lessons Learned: Property Rights and Natural Resources Management

Rural and Agricultural Incomes with a Sustainable Environment (RAISE) Indefinite Quantity Contract (IQC)

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ACRONYMS

BASIS	Broadening Access and Strengthening Input Market Systems
DFID	Department for International Development
GOR	Government of Rwanda
IQC	Indefinite quantity contract
LRMT	Land Resources Management Team
MINITRE	Ministry of Lands and Environment
NGO	Non-governmental organization
NRM	Natural resource management
OU	Operating unit
RAISE	Rural and Agricultural Incomes with a Sustainable Environment
RDI	Rural development Institute

PREFACE

There is a continuing need to understand and communicate how property rights issues change as economies move through various stages of economic growth, democratization, and, in some cases, from war to peace, and how these changes require different property rights reform strategies and sequencing to foster further economic growth, sound resource use, and political stability. The lack of secure and negotiable property rights is one of the most critical limiting factors in achieving economic growth and democratic governance throughout the developing world. Insecure or weak property rights have negative impacts on:

- Economic investment and growth
- Governance and the rule of law
- Environment and sustainable resource use, including parks and park land, mineral resources, forestry, and water resources
- Biodiversity and sustainable resource exploitation.

At the same time, robust and secure rights (along with other economic factors) can promote economic growth; good governance; and sustainable use of land, forests, water, and other natural resources.

Demand for assistance addressing property rights issues is increasing both from USAID missions and from host-country governments. This increase in demand is due to a growing awareness of the role of property rights (and resource access) and interest in addressing property rights issues as they relate to economic growth, governance, and natural resource management (NRM) by USAID missions and operating units (OUs). There is a continuing demand to build research, policy, and implementation strategies to address property rights issues, particularly as they relate to USAID strategic goals in economic growth, governance and natural resource management.

Under the Rural and Agricultural Incomes with a Sustainable Environment (RAISE) indefinite quantity contract (IQC), USAID has awarded ARD, Inc. a task order entitled Lessons Learned: Property Rights and Natural Resources Management. The task order supports a growing body of technical assistance needs and services to USAID worldwide on land tenure, property rights, and NRM.

The task order is a programming tool of the Land Resources Management Team (LRMT), a new entity created within the Economic Growth, Agriculture and Trade Bureau, Office of Natural Resources Management. The team provides technical, analytical, and project assistance to promote the development of land administration and management systems that improve or conserve the quality of these resources while also providing opportunities for increased household and community incomes. LRMT has oversight responsibility for this activity and will inform and consult with the USAID Community of Practice on Land Policy.

The effective date of the ARD task order is August 2004–May 2008.

This task order has the following objectives:

1. Transfer lessons learned regarding property rights and NRM to date to USAID management, missions, and partners.
2. Develop and host courses on land tenure and property rights issues (including best methodologies and sequence of reform steps) for staff in USAID's geographical regions and OU in Washington.
3. Conduct studies on the environmental, economic, or political impacts of land privatization or reform in USAID's geographical regions.
4. Test analytical and impact measurement tools for property rights reform previously developed by USAID.
5. Provide technical assistance to USAID missions and OUs for specific evaluation, design, and support other property rights reform activities.
6. Complement activities carried out under the LRMT's land tenure work and ongoing activities elsewhere in the agency that address land-related issues.

For further information on the task order, contact the cognizant technical officer, Gregory Myers, at gmyers@USAID.gov.

INTRODUCTION

This memorandum summarizes the work and results of an activity conducted through ARD, Inc. under the task order, Lessons Learned: Property Rights and Natural Resources Management, using the RAISE IQC. This activity was conducted as part of a broader set of global land tenure and property rights activities supported by USAID under this same task order.

This activity was undertaken by Rural Development Institute (RDI) to help the Government of Rwanda (GOR) create laws and regulations needed to implement Rwanda's Land Law. The activity began in October 2004 and was completed in August 2005. It will be followed by another phase of support that provides for additional assistance on land-related laws and regulations.

This brief report includes a short description of Rwanda's land tenure and property rights landscape and summarizes the land-related assistance provided by USAID to the GOR over the past two-and-a-half years. Some ideas for follow-on assistance are included as well.

LAND TENURE AND PROPERTY RIGHTS SITUATION IN RWANDA

Accessible and secure land resources and rights are central to poverty alleviation, economic growth, conflict prevention, and social equity. Where land access is more equitable and tenure security strengthened, there have been related and measurable improvements in investment and growth, transition to democratic government, and improved use of resources. Conversely, where land rights are poorly defined, limited, or insecure, or where land distribution is skewed, poverty levels are at their worst, marginalized groups are egregiously excluded from social and economic opportunity, and the seeds of violent conflict are present.

In Rwanda, land is the most valuable, productive, and contested asset. It is now the key to rural survival, and it is one of the primary resources that will best support future economic growth. Despite fledgling efforts to improve land access and rights, these issues remain a problem in Rwanda. Land-related problems include (but are not limited to):

- High population density and a very limited land resource pool, resulting in sub-optimal plot size for those that do hold land as well as an inability to accommodate the needs of the landless or returnees.
- Many conflicting claims to land parcels, which have been created by a series of population displacements and returns over the decades (a result of genocide and civil conflict).
- Tenure insecurity created by ambiguous, uncertain, and often unenforceable land rights.
- Uncertain and inequitable women's access and rights to land.
- A largely unproductive but nascent land market that is currently unable to spur or sustain economic growth and the efficient use of land resources.
- A lack of institutional and technical capacity to implement and sustain land reforms.

Land issues are identified as a priority in the GOR's Vision 2020 and the Poverty Reduction Strategy Plan, and the government's attitude toward land tenure and access reform is relatively open, progressive, and equitable. Several donors, including USAID, have recognized this reality and are supporting land tenure and property rights interventions. Over the past two years, USAID has been the key provider of land-related legal and regulatory development assistance and capacity building. The Department for In-

ternational Development (DFID) has served as a coordinating donor and will soon be providing long-term technical assistance for land administration interventions.

Over the past several years, the government drafted and revised a Land Policy and Land Law. They received some limited public review and input. The Land Law has been on the verge of enactment for several years, and reportedly has just now been passed through the parliament and signed into effect by President Kagame. While the new law suffers from ambiguity and contains a number of problematic provisions, it is comparatively progressive and potentially of value. The value and impact of the law will, of course, be a function of its implementation. Subsequent implementing laws and regulations could go a long way toward resolving ambiguities and pave the way for better implementation. In short, the stage is set to make needed and productive changes in the land tenure and property rights landscape in Rwanda.

USAID LAND-RELATED ASSISTANCE

In January 2002, USAID provided RDI an opportunity to prepare a pro bono summary desk review of the draft Land Policy and draft Land Law. The review concluded that, while the effort to address important land issues and to set a path for future action was progressive and laudable, the land policy and land law were overly ambitious (given capacities to implement) and did not completely take into account the multitude of competing interests. There were also a number of specific problems related to the quality and consistency of the drafting: the organization of the documents, the definitions of terms and concepts, the breadth and aims of the policy objectives, the attempts to reconcile customary and formal written law, the undue attention paid to the importance of a sophisticated land registration and cadastre system, the attempts to address land fragmentation and consolidation, and other issues. Recommendations for the draft law were provided by RDI through USAID and, to some small extent, were taken into consideration by the Rwandan drafters.

In May 2003, through the Broadening Access and Strengthening Input Market Systems (BASIS) Collaborative Research Support Program mechanism, USAID asked RDI to conduct a more detailed review of the then most current versions of the land policy and land law. A significantly larger collection of the available literature was gathered and used to inform the desk review. The Rwandan Ministry of Lands and Environment (MINITERE) set out the primary topics on which they wished to receive input. The draft review and recommendations were widely circulated to donors, non-governmental organizations (NGOs), and the government. For the most part, review comments from the donors and NGOs echoed the conclusions set out in the desk review. The government's response was guarded but cordial and relatively receptive.

The Ministry's topics of interest matched up with most of the issues highlighted by RDI/USAID in the 2002 review. Specifically, the 2003 work done under BASIS focused on land consolidation, land registration, the prospect of future land taxation, the proposals for land commissions, approaches to land allocation, and dispute resolution mechanisms. At this point, several of the original and subsequent suggestions resulted in changes to the draft law. Most notably, a provision permitting the Rwandan government to compel the consolidation of land plots was softened to simply allow the government to encourage consolidation through market and other incentives.

In February 2004, an RDI consultant traveled to Rwanda on behalf of USAID to work in concert with the DFID in-country land specialist assisting MINITERE on a list of topics suggested by MINITERE counterparts. Some limited rural fieldwork was done, and a number of key informant interviews were conducted with central, provincial, and district government representatives. The consultant also visited with Rwandan-based NGOs and donors.

Given MINITERE's perspective that the land law had been finalized, the focus of the work was on recommendations related to implementation. The primary topics were land registration, land commissions, land concessions, and land valuation (for purposes of determining compensation amounts in the event of eminent domain takings). A variety of recommendations were provided to and favorably received by MINITERE. Notable issues addressed during the work included the definition and issuance of basic land rights (through long-term usufruct concessions), the difficulties in setting up viable land commissions, and the need to provide fair compensation in the event of land takings.

RAISE TASK ORDER

In mid-2004, anticipating the enactment of the land law, MINITERE concluded that a closer and more intense collaboration with USAID would be appropriate and asked for additional inputs from RDI land law specialists to prepare for implementation of the new law. USAID and RDI asked MINITERE to describe the areas where the government wanted help. The ministry identified land expropriation (and valuation), land commissions, and land concessions as the central areas in need of immediate attention. Consequently, under the RAISE IQC task order, Lessons Learned: Property Rights and NRM, an activity was issued to ARD to provide assistance with the laws and regulations needed for implementation of the overlying land law. Between October 2004 and August 2005, RDI provided technical assistance with an expropriations law and a valuation methodology. There have been several steps in this process:

1. An initial round of fieldwork was conducted to gather information on existing conditions and future expectations and needs. Results indicated a genuine desire on the part of government to provide fair compensation and to limit takings to those uses required to further the public interest (as mandated by the 2003 Rwandan Constitution). However, results also showed a lack of resources needed to pay compensation and a lack of a functional and realistic mechanism to value expropriated property. Also, given the reality of widespread informal peri-urban and urban development, it became clear that a conflict could develop around including land-use planning as a "public purpose" that could prompt land takings.
2. An extensive commentary about comparative law from around the world was prepared, showing how other developing and developed countries have addressed the public purpose, compensation, and due process issues in land takings. This material was given to MINITERE for its review and to provide options for the legislative drafting process.
3. Follow-up discussions were held with MINITERE about its conclusions and about the features it wanted to include within the expropriation law.
4. RDI lawyers created a draft expropriations law. The law provided for a relatively circumscribed definition of public purpose, and did not include land use planning as a purpose that could prompt a taking. A compensation method, based on market values, was proposed, and an extensive process featuring notice, public hearings, consideration of public input, routes of appeal, and other safeguards was created.
5. MINITERE conducted at least a partial intra-governmental consultation over the draft law.
6. Follow-on discussions were held with MINITERE about the specifics of the law and proposed changes. A revised version was prepared. The final version (to be prepared by MINITERE) will probably include land-use planning as a public purpose.
7. In response to additional MINITERE requests, more information was gathered on valuation, in preparation for drafting a stand-alone law on valuation procedures and setting up a "valuers" profession and related governing and certification organization.

During all of these steps, Rwandan government representatives have been relatively open, genuinely collaborative, and remarkably progressive in their perspectives. Barring eleventh-hour capture of the process by unanticipated government actors, the resulting expropriations law and subsequently developed valuation law will be workable, fair, and instrumental in increasing tenure security and in prompting investment in the land.

RAISE—TASK ORDER—NEXT PHASE

MINITERE has asked USAID to provide ongoing assistance with supporting land laws and regulations. ARD and RDI will continue to provide technical assistance in order to help complete the valuation law. Tasks will then move to the land commissions and land concessions regulations. This phase of assistance is expected to start in September 2005 and conclude in September 2006.

Creation of transparent and workable land commissions will be important to conducting land takings pursuant to the new expropriations law, and the commissions will also have a role in dispute resolution, land administration oversight, and land-use planning.

Assisting with land concessions regulations is of particular importance because contributions in the drafting process could be tantamount to defining the actual rural, peri-urban, and urban land tenure types that will exist within Rwanda. At this point, ambiguities and a lack of conceptual sophistication in the Land Law leave these tenure types undefined and uncertain. If tenure type definitions that are clear, long-term, enforceable, marketable, and beneficial are created, an environment conducive to investment, economic development, efficient use of resources, and stewardship should result. Plus, clearly defined rights and obligations will provide the certainty and enforceability needed for any functional dispute resolution process.

OTHER AREAS OF LAND POLICY/LEGAL REFORM IN NEED OF ATTENTION

Additional assistance could usefully be provided in several other land-related areas. Some of this assistance could parallel current activities, while some of it would appropriately be sequenced during later phases. All of these activities would fit well with the land reform program to be undertaken by DFID over the next three years. These activities include:

- Policy, legal, and regulatory assistance that addresses other areas of need, including market transactions, mortgage, and formalization of existing informal development. Ancillary activities could include training of government officials and assistance in legal literacy efforts, establishment of legal aid programs, assistance in planning for and aiding in implementation of laws and regulations, and a special focus on establishing dispute resolution mechanisms.
- Institutional capacity building, including training of MINITERE staff in legislative drafting and creation of regulations; training of land administration staff in the legal elements of titling and registration, dispute resolution, and land-use planning; training of Ministry of Justice staff in land-related law and policy; and the training of Land Committee members in land and property rights planning and administration and dispute resolution.
- Assistance in design and implementation of appropriate pilot projects, including (1) titling and registration, (2) formation of and operating assistance to community corporate entities desiring to use and benefit from their land resources in collaboration with private commercial investors, (3) creation of local dispute resolution mechanisms that combine informal and formal components (building upon or in conjunction with the Abunzi local mediation function), and (4) formation and operation of Land Committees.

- Support to NGOs (in the form of training and direct assistance) that focus on land and property rights issues. Topical issues might include legal literacy and legal aid assistance, property rights formalization, land-related research (both in technique and in data gathering), land tenure types, land-related conflicts, land uses, land distribution patterns, women's rights and access to property, customary practices, economic development of land assets, credit availability and use, and others.
- Assistance in creating tools for commercial interests to use in investing in land-related business, while ensuring the protection of individual and community property rights and of natural resources.
- Special focus on the gender issues related to land access and rights, joint titling, inheritance, household breakdown, HIV/AIDS and land, and other land-related issues identified in the recent USAID gender assessment.